

EXHIBIT 8

(PART 2 OF 3)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA) C-12-00630 LHK
CORPORATION,)
) SAN JOSE, CALIFORNIA
PLAINTIFF,)
) APRIL 22, 2014
VS.)
) VOLUME 11
SAMSUNG ELECTRONICS CO., LTD.,)
A KOREAN BUSINESS ENTITY;) PAGES 2620-2873
SAMSUNG ELECTRONICS AMERICA,)
INC., A NEW YORK CORPORATION;)
SAMSUNG TELECOMMUNICATIONS)
AMERICA, LLC, A DELAWARE)
LIMITED LIABILITY COMPANY,)
)
DEFENDANTS.)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTERS: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

UNITED STATES COURT REPORTERS

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DIRECT KEARL

2656

1 STIPULATION TO READ IN.

2 THE COURT: OKAY. GIVE US ONE MINUTE TO GET SET UP,
3 PLEASE.

4 (PAUSE IN PROCEEDINGS.)

5 THE COURT: OKAY. THE JURORS ALL HAVE A PHOTO?

6 THE CLERK: UM-HUM.

7 RAISE YOUR RIGHT HAND, PLEASE.

8 **(DEFENDANTS' WITNESS, JAMES KEARL, WAS SWORN.)**

9 THE WITNESS: I DO.

10 THE CLERK: WOULD YOU HAVE A SEAT, PLEASE.

11 PULL THE MICROPHONE TOWARDS YOU AND STATE YOUR NAME,
12 PLEASE, AND SPELL IT.

13 THE WITNESS: JAMES RUSSELL KEARL, K-E-A-R-L.

14 THE COURT: ALL RIGHT. TIME IS 9:49.

15 GO AHEAD, PLEASE.

16 MR. CEDERBERG: YES, I'D LIKE TO READ A STATEMENT,
17 STIPULATION FROM THE JOINT AMENDED PRETRIAL STATEMENT AND
18 PROPOSED ORDER. ON PAGE 6, ITEM 14, SAMSUNG'S LAWSUIT INFORMED
19 APPLE OF ALL OF SAMSUNG'S ASSERTED PATENTS ON APRIL 18TH, 2012.

20 THE COURT: GO AHEAD, PLEASE.

21 **DIRECT EXAMINATION**

22 BY MR. CEDERBERG:

23 Q. DR. KEARL, WHAT DO YOU DO FOR A LIVING?

24 A. I'M A PROFESSOR OF ECONOMICS AT BRIGHAM YOUNG UNIVERSITY,
25 AND A SENIOR CONSULTANT WITH CHARLES RIVER ASSOCIATES.

DIRECT KEARL

2657

1 Q. CAN WE PUT UP SDX 3920.

2 AND WHAT IS THIS?

3 A. THIS IS A BRIEF BIO.

4 Q. OKAY. I NOTICE ON THE -- ON YOUR BRIEF BIO AT THE BOTTOM,
5 IS THAT YOUR EDUCATIONAL BACKGROUND?

6 A. YES. I HAVE A PH.D. IN ECONOMICS FROM M.I.T., AND I DID A
7 POSTDOC IN LAW AND ECONOMICS AT THE HARVARD LAW SCHOOL.

8 Q. AND THE THIRD BULLET POINT DOWN SAYS AUTHOR. HAVE YOU
9 WRITTEN ANYTHING?

10 A. I HAVE PUBLISHED TWO BOOKS IN ECONOMICS AND A NUMBER OF
11 ARTICLES IN THE LEADING ECONOMICS JOURNALS.

12 Q. AND THE SECOND BULLET POINT FROM THE BOTTOM SAYS EXPERT
13 WITNESS, AND IT SAYS RULE 702, COURT, ORACLE V. GOOGLE
14 LITIGATION.

15 CAN YOU TELL THE JURY WHAT THAT ROLE WAS?

16 A. I'VE BEEN AN EXPERT WITNESS IN A LOT OF CASES, BOTH FOR
17 PLAINTIFFS AND DEFENDANTS. BUT A FEW YEARS AGO, I WAS HIRED BY
18 JUDGE WILLIAM ALSUP OF THE NORTHERN DISTRICT OF CALIFORNIA TO
19 BE A COURT EXPERT, TO BE HIS EXPERT.

20 THE -- ORACLE HAD ITS OWN DAMAGES EXPERT, AND GOOGLE HAD
21 ITS DAMAGES EXPERT, AND JUDGE ALSUP WANTED AN INDEPENDENT
22 EXPERT REPRESENTING THE COURT.

23 Q. OKAY. HAVE YOU -- AND WHAT IS YOUR AREA OF EXPERTISE?

24 A. APPLIED MICROECONOMICS AND THE ESTIMATION OF LEGAL
25 DAMAGES.

DIRECT KEARL

2658

1 MR. CEDERBERG: YOUR HONOR, WE TENDER DR. KEARL AS AN
2 EXPERT ON ECONOMICS FOR PURPOSES OF CALCULATING DAMAGES.

3 MR. LEE: NO OBJECTION, YOUR HONOR.

4 THE COURT: ALL RIGHT. HE'S SO CERTIFIED.

5 GO AHEAD, PLEASE.

6 BY MR. CEDERBERG:

7 Q. OKAY. WHAT WERE YOU ASKED TO DO IN THIS MATTER?

8 A. I WAS ASKED TO ESTIMATE THE REASONABLE ROYALTY DAMAGES
9 THAT SHOULD BE PAID TO SAMSUNG FOR APPLE'S INFRINGEMENT OF TWO
10 PATENTS, THE '239 PATENT AND THE '449 PATENT.

11 Q. WHEN YOU DID THIS ANALYSIS, DID YOU MAKE ANY ASSUMPTIONS?

12 A. I ASSUMED THAT THE PATENTS WERE BOTH VALID AND BOTH
13 INFRINGED.

14 Q. OKAY. LET'S START WITH THE '239 PATENT.

15 CAN YOU PUT UP SDX 3922.

16 OKAY. AND CAN YOU DESCRIBE TO THE JURY WHAT YOU
17 UNDERSTOOD THE ACCUSED FEATURES TO BE IN THE ACCUSED PRODUCTS?

18 A. SURE. YOU'VE HEARD THIS FROM THE TECHNICAL EXPERTS, BUT
19 THE ACCUSED FEATURES ON THE '239 PATENT ARE THE USE OF FACETIME
20 TO TRANSMIT VIDEO CALLS OVER A CELLULAR CONNECTION; AND THEN
21 THERE ARE TWO OTHER, ONE TO TAKE VIDEO AND TRANSMIT IT TO
22 ANOTHER DEVICE VIA E-MAIL; AND THE THIRD ONE IS TO TAKE VIDEO
23 AND TRANSFER IT TO ANOTHER DEVICE VIA TEXT MESSAGE.

24 THE IPHONE 4 IS ACCUSED UNDER THE SECOND AND THIRD. THE
25 IPHONE 4S AND 5 ARE ACCUSED UNDER THE FIRST -- ALL THREE

DIRECT KEARL

2659

1 FEATURES.

2 Q. AND WHO ORIGINALLY OWNED THE '239 PATENT?

3 A. IT WAS OWNED ORIGINALLY BY VOCI, WHICH IS --

4 Q. OKAY. IS THAT VIDEO OVER CELL? IS THAT THE NAME OF THE
5 COMPANY?

6 A. IT IS.

7 Q. AND HOW DID SAMSUNG ACQUIRE IT?

8 A. SAMSUNG PURCHASED THE PATENT -- I'M SORRY -- PURCHASED THE
9 PATENT IN SEPTEMBER OF 2010.

10 Q. AND FOR HOW MUCH?

11 A. \$2.3 MILLION.

12 Q. NOW LET'S GO TO THE '449 PATENT.

13 CAN SDX 3923 BE PLACED UP.

14 AND WHAT DID YOU UNDERSTAND THE FEATURES AND THE ACCUSED
15 PRODUCTS TO BE THERE?

16 A. THE ACCUSED FEATURE IN THIS CASE IS THE DISPLAY OF THE
17 NUMBER OF PHOTOS OR VIDEOS IN, NEAR THE TITLE IN THE ALBUM, AND
18 THE ACCUSED PRODUCTS ARE THE IPHONES 4, 4S, AND 5, AND THE IPOD
19 TOUCH, FOURTH AND FIFTH GENERATION.

20 Q. CAN YOU TELL THE JURY WHAT APPROACH YOU DEVELOPED IN ORDER
21 TO ESTIMATE WHAT THE REAL REASONABLE ROYALTY DAMAGES WOULD BE?

22 A. SURE. YOU'VE HEARD THE GEORGIA-PACIFIC FACTORS FROM OTHER
23 WITNESSES. I APPLIED THE GEORGIA-PACIFIC APPROACH. THERE ARE
24 15 FACTORS.

25 FACTOR 15 SUGGESTS A HYPOTHETICAL NEGOTIATION BEFORE

DIRECT KEARL

2660

1 INFRINGEMENT, AND FACTORS 1 THROUGH 14 THEN FRAME AND INFORM
2 HOW YOU THINK ABOUT THAT HYPOTHETICAL NEGOTIATION. AND THAT'S
3 THE APPROACH THAT I TOOK.

4 Q. WITH REGARD TO THE HYPOTHETICAL NEGOTIATION THAT YOU
5 DEVELOPED AS YOUR MODEL, WHO WERE THE PARTICIPANTS IN THAT
6 NEGOTIATION?

7 A. INFRINGEMENT OCCURS BEFORE THESE PATENTS ARE SOLD, SO IN
8 THE '239 PATENT, THE PARTIES WOULD BE APPLE AND THE OWNER OF
9 THE PATENT AT THE TIME, VOCI; AND FOR THE '449 PATENT, IT WOULD
10 BE APPLE AND THE OWNER OF THE PATENT AT THE TIME, HITACHI.

11 Q. WHY DID YOU CONCLUDE THAT THE REASONABLE ROYALTY DAMAGES
12 THAT YOU CALCULATED THAT SAMSUNG'S ENTITLED TO?

13 A. SAMSUNG PURCHASED BOTH OF THOSE PATENTS AND IT OWNED THEM
14 DURING THE RELEVANT DAMAGES PERIOD.

15 Q. OKAY. HAVE YOU DEVELOPED AN OPINION BASED UPON YOUR
16 ANALYSIS OF THE REASONABLE ROYALTY DAMAGES RESULTING FROM THE
17 INFRINGEMENT OF THOSE TWO PATENTS?

18 A. I HAVE.

19 Q. MAY SDX 3942 BE PLACED IN FRONT OF THE WITNESS.

20 OKAY. AND WHAT DOES THIS SHOW?

21 A. I ESTIMATE THAT THE REASONABLE ROYALTY DAMAGES FOR THE
22 '239 PATENT FOR THE THREE FEATURES TOGETHER, THAT IS, PUT
23 TOGETHER, IS \$6,067,788; AND THAT THE REASONABLE ROYALTY FOR
24 THE '449 PATENT FOR THE SINGLE FEATURE IS \$158,400.

25 Q. OKAY. CAN WE PUT UP SDX 3925.

DIRECT KEARL

2661

1 IN ARRIVING AT YOUR DAMAGES OPINION, WHAT MATERIALS DID
2 YOU REVIEW AND ANALYZE AND RELY ON?

3 A. THERE WAS AN ENORMOUS AMOUNT OF INFORMATION FROM APPLE,
4 FROM THIRD PARTY SOURCES, PUBLICLY AVAILABLE INFORMATION.

5 IN THE CATEGORIES THAT I SUGGESTED IN THIS DEMONSTRATIVE,
6 I REVIEWED ALL OF THAT INFORMATION, OR HAD MY STAFF REVIEW IT,
7 AND CONCLUDED FROM THAT THAT PARTICULARLY THE FACETIME USE WAS
8 VERY IMPORTANT TO APPLE, THAT APPLE ADVERTISED IT, IT TALKED
9 ABOUT IT A LOT.

10 THE OTHER TWO FEATURES WERE TALKED ABOUT LESS, BUT WERE
11 TALKED ABOUT BY APPLE.

12 THE '449 FEATURE, THE NUMBER OF THE ALBUMS, WAS NOT REALLY
13 NOTED IN THESE DOCUMENTS, SO IT WAS A USEFUL FEATURE, BUT NOT
14 AS IMPORTANT AS THE FACETIME AND THE FEATURES IN THE '239
15 PATENT.

16 Q. UNDER ALL THOSE MATERIALS THAT YOU REVIEWED, DID YOU
17 REVIEW APPLE'S -- A VIDEO OF APPLE'S JUNE 7TH, 2010 LAUNCH
18 EVENT OF THE IPHONE 4?

19 A. I DID.

20 Q. MAY SDX 3928 BE PLACED ON THE SCREEN.

21 CAN YOU TELL US WHAT THAT IS?

22 A. SURE. THIS IS A SCREEN SHOT FROM THAT VIDEO. AT THIS
23 CONFERENCE, STEVE JOBS ANNOUNCES THE IPHONE 4, AND -- WITH A
24 LOT OF FANFARE, HE ANNOUNCES FACETIME, A FEATURE OF THAT PHONE.

25 HE THEN DEMONSTRATES THE FEATURE BY MAKING A CALL TO

DIRECT KEARL

2662

1 TONY IVES USING FACETIME, AND AFTER THAT, HE'S COMMENTING ON
2 SORT OF WHAT THE FEATURE WILL BE, OR WHAT THEY HOPE THE FEATURE
3 BECOMES.

4 SO HE SAYS THAT THE FEATURE IN 2010 WILL BE WI-FI ONLY,
5 BUT THAT APPLE ANTICIPATES OR HOPES THAT IT CAN BECOME FACETIME
6 OVER CELLULAR AS WELL.

7 Q. DID APPLE EVENTUALLY MAKE FACETIME AVAILABLE OVER
8 CELLULAR?

9 A. IT DID. TWO YEARS LATER AT A JUNE CONFERENCE, IT
10 ANNOUNCED IOS 6, AN OPERATING SYSTEM THAT MADE FACETIME OVER
11 CELLULAR POSSIBLE.

12 Q. CAN WE PUT UP SDX 3930, PLEASE.

13 A. THIS IS A SCREEN SHOT FROM THAT VIDEO THAT I REVIEWED.
14 AGAIN, IN JUNE OF 2012, SCOTT FORSTALL, WHO WAS THEN THE
15 VICE-PRESIDENT FOR TECHNOLOGY FOR APPLE, INDICATES -- YOU CAN
16 READ THE QUOTE, BUT HE SAYS THAT FACETIME IS A TERRIFIC WAY TO
17 HAVE VIDEO CALLS, BUT IT HAS THIS ONE LIMITATION, IT'S ONLY
18 AVAILABLE OVER WI-FI, AND THAT HE'S HERE TO ANNOUNCE THAT
19 THERE'S A NEW FEATURE -- OTHER FEATURES WERE ANNOUNCED AS
20 WELL -- BUT IT WAS THIS FEATURE IN WHICH IOS 6 WOULD ENABLE
21 FACETIME OVER CELLULAR.

22 Q. OKAY. CAN WE PUT UP SLIDE SDX 3938.

23 AND I WANT TO WALK THE JURY THROUGH THE METHODOLOGY YOU
24 USED TO GET THOSE DAMAGE NUMBERS. CAN YOU JUST GIVE US AN
25 OVERVIEW OF WHAT THAT IS?

DIRECT KEARL

2663

1 A. SURE. IN ORDER TO DERIVE A REASONABLE ROYALTY, I -- THERE
2 WERE FIVE STEPS.

3 THE FIRST OF THE STEPS IS THAT APPLE, IN THE NEGOTIATION,
4 WOULD BE WILLING TO PAY MORE IF IT SOLD LOTS OF UNITS THAT
5 INCORPORATED THE INFRINGING, AND LESS IF IT SOLD FEWER. SO I
6 USED THE NUMBER OF INFRINGING UNITS DERIVED FROM APPLE
7 FINANCIAL DOCUMENTS.

8 BUT APPLE, IN THE HYPOTHETICAL NEGOTIATION, WOULDN'T BE
9 WILL TO PAY FOR ALL OF THOSE UNITS IF IT THOUGHT ONLY PART OF
10 THE PEOPLE WHO HAD THE INFRINGING FUNCTIONALITY WOULD BE USING
11 IT, SO I ADJUSTED THAT DOWNWARD BY THE USAGE RATE.

12 Q. WHERE DID YOU GET THE USAGE RATE?

13 A. I GOT THE USAGE RATE FROM DR. RAO'S SURVEY.

14 Q. NOW WE'RE DOWN TO THE THIRD CIRCLE THERE THAT SAYS \$.99
15 MAC FACETIME APP. WHAT'S THAT?

16 A. I HAVE A QUANTITY, AND NOW I HAVE TO GIVE A DOLLAR VALUE
17 TO THAT QUANTITY. APPLE ACTUALLY SOLD FACETIME AS AN APP FOR
18 THE MAC FOR \$.99, SO I USED THAT MARKET PRICE FOR FACETIME AS A
19 WAY OF MONETIZING THE QUANTITY.

20 Q. AS A TRAINED ECONOMIST, DID YOU REVIEW THIS EVIDENCE OF
21 DEMAND FOR THAT FACETIME APP AT THE PRICE OF \$.99?

22 A. SURE. APPLE PUT THIS UP. MR. JOBS INDICATED THAT, WHEN
23 HE ROLLED OUT THE IPHONE 4, THAT THE NUMBER ONE DEMAND FOR MAC
24 USERS WAS FACETIME ON THE MAC. WHEN THEY FINALLY MADE IT
25 AVAILABLE, ABOUT 900,000 PAID APPS WERE DOWNLOADED FOR THE MAC.

DIRECT KEARL

2664

1 FOR THE FIRST FOUR WEEKS AFTER IT WAS ANNOUNCED, IT WAS
2 THE NUMBER ONE DOWNLOAD, PAID DOWNLOAD, FOR MACS.

3 AND FOR 31 WEEKS IN THE NEXT 18 MONTHS OR SO, IT WAS IN
4 THE TOP 10 OF PAID DOWNLOADS FOR THE MAC.

5 Q. OKAY. NOW, USING YOUR METHODOLOGY, YOU'VE BEEN WALKING US
6 THROUGH THE FACETIME PART OF THE PATENT.

7 NOW WE'RE AT THE RELATIVE VALUE. WHAT DID YOU HAVE TO DO
8 SPECIAL FOR THE FACETIME PORTION?

9 A. WELL, IT TURNS OUT THAT ON THE IPHONE, YOU CAN MAKE
10 FACETIME CALLS EITHER BY WI-FI OR YOU CAN MAKE THEM BY
11 CELLULAR.

12 WI-FI IS NOT ACCUSED OF INFRINGING THE PATENT, CELLULAR
13 IS. SO I NEEDED TO APPORTION THE \$.99 BETWEEN THE VALUE THAT
14 CONSUMERS PUT ON WI-FI, THE CELLULAR -- FACETIME OVER WI-FI
15 VERSUS FACETIME OVER CELLULAR.

16 AND TO DO THAT, I USED THE RELATIVE VALUE SCORES DERIVED
17 FROM DR. RAO'S SURVEY.

18 IT TURNS OUT THAT WHEN YOU CALCULATE THIS, THAT THE
19 RELATIVE VALUE IS ABOUT HALF, THAT IS, PEOPLE PUT ABOUT HALF
20 THE VALUE ON FACETIME OVER WI-FI AND ABOUT HALF THE VALUE ON
21 FACETIME OVER CELLULAR.

22 SO THE FOURTH CIRCLE, TIMES THE THIRD CIRCLE, IS ABOUT
23 \$.50.

24 Q. OKAY. AND WITH THE OTHER TWO FEATURES THAT WE SAW ON THE
25 '239 PATENT, HOW DID YOU MONETIZE THEM?